

IN THE COURT OF COMMON PLEAS OF YORK COUNTY

IN re COURTROOM SECURITY

MD - 2288-2019

Proceedings before the Honorable Craig T. Trebilcock

INTERIM EMERGENCY ORDER

On July 19, 2019, the York County Commissioners of York concluded an investigation of certain alleged security lapses within the York County Judicial Center. That investigation unanimously concluded that the Sheriff was derelict in his duty to properly screen a former felon who was admitted to a PFA proceeding before the York County Court of Common Pleas, to which the felon was a named party, without having been searched or screened through available metal detectors (person)/x ray screening devices (property), and after being afforded a special privilege to park in the same secure parking structure below this courthouse as the judge who would decide the outcome of his proceeding.

That matter is not before this bench and this judge has no findings of fact or statement to make in regard to that matter, which is pending before another Judge of the Court of Common Pleas. It is referenced, for illustrative purposes only, as it is the progeny of a policy position assumed by the Sheriff that runs afoul of this Court's ethical duties pursuant to the Pennsylvania Code of Judicial Conduct.

Subsequent to, and in response to the deficiencies found by the Commissioners, the Sheriff has made policy statements by way of explanation that are of concern to this bench, as adversely impacting this court's ethical obligations in presiding over a criminal docket, where the most serious felonies are adjudicated. The Sheriff indicates that he has previously foregone standard security screening procedures¹ of screening or searching members of the public entering the courthouse, without notice to this court. He has asserted that he has the sole discretion to do so, even when the individual in question is a convicted felon. He has not indicated in any public statement that he will desist from permitting those with prior serious criminal records from bypassing the security screening protocols applicable to the general public, nor that the exercise of this claimed discretion has been or will be coordinated with the court of common pleas judges in the future. It has not been so coordinated in the past or in recent events.

¹ Metal detector screening or other appropriate search of the person of a non-courthouse employee for weapons or other forbidden items, such as cameras, recording devices, and contraband.

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Security in this courthouse is not the sole function of one person, nor of one department. It is a shared responsibility. The Sheriff's department has primary responsibility for maintaining security within the structure of the judicial center. The Deputies of the Sheriff's department are dedicated and outstanding, conducting their jobs in a professional manner with courtesy, dedication, and individual efficiency. This court daily trusts them with its life, with great confidence.

A Court of Common Pleas judge, however, has individual legal responsibility to ensure that proceedings in their courtroom are conducted in an orderly fashion, without disruption, and that proceedings are conducted and supported in a manner that promotes public confidence in the justice system. This affirmative duty also necessarily includes ensuring that proceedings are conducted in a safe manner. The judge has primary responsibility within their individual courtroom to ensure that proceedings are conducted so that parties, attorneys, jurors, and members of the general public are safe, proceedings are fair and impartial, and so that the dignity of the court's authority is maintained. This obligation is supported by the Sheriff's Department. The responsibility again overlaps. However, whereas the Sheriff's department has primary responsibility in the general courthouse, within the courtroom it is with the judge with whom the primary duty lies to ensure orderly, unbiased, and just proceedings.

The law instilling this affirmative duty upon a judge is referenced, in the Pennsylvania Code of Judicial Conduct. Rule of Judicial Conduct 1.2 mandates that "A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety."

Rule 2.8 of the Code of Judicial Conduct works in tandem with Rule 1.2, requiring that "A judge shall require order and decorum in proceedings before the court." This is not optional. The rule makes clear that a judge "shall require order." It does not allow for that duty to be delegated to another.

Disruptions caused by litigants, witnesses, or other aggrieved persons who have not been subject to effective and thorough security screening in accordance with established security protocols threaten to undermine the order and decorum that is the judge's responsibility.

Individuals who are not properly screened for weapons or other illicit objects before being admitted to proceedings of the Court of Common Pleas are a threat not only to general safety, but to that order which the Rules of Judicial conduct requires the presiding judge to maintain. Cameras and cell phones are prohibited under the security rules of this Judicial Center, for example, as photographs or recordings of witnesses can be used for intimidation and retribution by aggrieved parties. The threat from weapons or harmful substances to attorneys, deputies, and other court personnel is apparent on its face. Accordingly, in partnership with the Sheriff's Department, the judge relies upon every party and witness to a proceeding, as well as the general public, being fully and faithfully screened through metal detectors, and the imaging of their possessions, prior to entry to the courtroom. This is regardless of their socioeconomic class, personal familiarity of security personnel with the individual, or any other irrelevant factor. Security is only as strong as the weakest link in the chain. When exceptions are made based upon personal familiarity, social status, or individual wealth then security no longer exists.

The need for one standard of security to apply to all lay persons appearing before the court of common pleas is at the heart of the court's mission to deliver justice in an impartial, unbiased manner. When favorable personal treatment is afforded to a party to a court action that is not afforded to the opposing

party, it erodes trust in the impartiality of the justice system. Accordingly, the Pennsylvania Code of Judicial Conduct states at Rule 2.3(B), “A judge shall not, in the performance of judicial duties, by words, *or conduct*, manifest bias or prejudice, or engage in harassment, including but not limited to bias prejudice, or harassment based on...socioeconomic status, or political affiliation, *and shall not permit court staff, court officials, or others subject to the judge’s direction and control to do so.*” (emphasis added)

The last clause of Rule 2.3(B) recognizes that there is a team of court and justice individuals, each with a distinct role in the justice process, who may and must be directed by the court, when necessary, to cease conduct that demonstrates bias, prejudice, or harassment concerning individuals involved in judicial proceedings. These persons, subject to the court’s direction in executing these obligations include, but are not limited to, the prosecutors who bring charges, the defense counsel who represent members of our community, the deputies who transport prisoners and maintain security in the courtroom, and the probation officers who supervise those who have been found guilty. This is again an area of shared and overlapping responsibilities between the judge and the performance standards established by their individual departments. The rule makes clear, however, that when the issue of bias, prejudice, or harassment concerning a court proceeding is at issue, it is the court that has the affirmative responsibility to act to correct the transgression.

It is always the judge who has the lead responsibility to ensure the courtroom functions without favoritism or bias being exhibited. The judge cannot sit idly by and permit any of the individuals playing their respective roles in the justice system to act with bias, prejudice, or harassment, and thereby trigger a ripple effect under which the fairness and impartiality of the entire justice system is called into question. Were a judge to tolerate such conduct, public faith in the justice system would rapidly erode, regardless of whether it was the judge personally who engaged in the conduct, or one of the persons of influence who play a significant role over the lives of our County’s citizens.

There are not favored individuals or classes of persons appearing before the courts. Everyone is equal in the eyes of the law. The court system does not have a First Class and Economy Class partition. When a benefit is conveyed solely upon one party to a court dispute by a courthouse official, to the exclusion of the opposing party, and there is no legitimate rule-based reason for the difference, there is a threat to the impartiality of the justice system. There is a threat to public confidence in the justice system. Without reference to any particular case, but as an illustrative example, special free parking provided to one party but not the other party, personal escorts by high ranking courthouse officials, use of areas not open to public use to wait for proceedings in comfort, or permitting a litigant to bring in their phone to the courthouse when members of the general public are inconvenienced by being required to be without their phone upon entering the courthouse – these types of special benefits afforded on an arbitrary basis to any litigant are inappropriate and convey an aura of an uneven playing field, colored with bias, that undermines the judge’s authority and duty to maintain impartiality in the courtroom. A primary focus anywhere but on the corrosive impact such favoritism or bias plays across the entire justice system is misplaced.

The investigation of the county commissioners has disclosed to this court that there is a emergent risk of current and ongoing security practices within the courthouse that are arbitrary and which demonstrate bias, which places at risk the ability of the court to maintain order, which places the ability of the court to ensure that bias and favoritism does not infect legal proceedings at risk, and which risks undermining

public confidence in the independence, integrity, and impartiality of proceedings before this court. Accordingly, to preserve this court's obligation under the Pennsylvania Code of Judicial Conduct the following order is entered:

ORDER

Effective immediately:

- 1) No parties, witnesses, jurors or prospective jurors, members of the general public, or any other non-court personnel shall be admitted to the courtroom for any proceeding before the Honorable Craig T. Trebilcock, without passing through the standard county security protocols and procedures applicable to a) those in custody (where appropriate), or b) all members of the general public (if not in custody). At a minimum, screening to group (b) will include but not be limited to, screening through available metal detectors (persons) and x-ray type screening devices (for property), where feasible;
- 2) If due to unavailability of screening devices, or a unique condition of the person to be searched, standard security procedures are not appropriate, the Sheriff's department will follow its standard procedures in such case, and provide in person notice to the court, before court is convened, that an individual has not been fully searched/screened, with full explanation as to what deviation from standard security procedures has occurred. In this manner the court may preserve its own mandated duty to ensure order, safety, and decorum is maintained in the courtroom.
- 3) If any witness or party to an action before this court is to be conveyed anything of value by the Sheriff's department that is not available to the general public, including but not limited to free parking, an item for which the general public must typically pay, notice of such proposed action shall be provided to the court, and to all parties to the action 48 hours in advance of the proceedings, stating the unilateral benefit being conveyed, along with the neutral and impartial reason for conveying such benefit. This timing is mandated so that the opposing party has the time to raise any objection and seek relief, including seeking the recusal of the Sheriff's Department, if bias, prejudice, or harassment is demonstrated. Said notice is necessary so that the court may ensure that such conduct, or deviations from standard security protocols, do not demonstrate bias against an opposing party, or favoritism in favor of the person receiving said benefit, so that the court may fulfill its obligation under the ethical rules to ensure that all proceedings before the bench are conducted in a manner that promotes public confidence, are done with independence, integrity, and impartiality, and avoid impropriety or even the appearance of impropriety.

The provisions of this order are applicable to and binding upon the York County Sheriff's Department and its agents, to any law enforcement organization that has primary responsibility for bringing individuals before this court, and all persons and parties appearing before the Honorable Craig T. Trebilcock for any matters convened before said judge, effective immediately. It is not applicable or binding to any other proceedings before any other judges of the Court of Common Pleas of York County, at this time, without their express adoption.

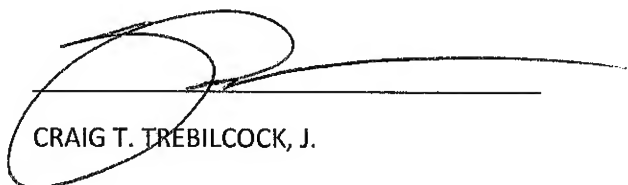
Any person, department, or entity who believes that their rights, authority, operations or privileges will be improperly or unduly and adversely impacted by this order may petition for relief or variation from the terms of this order within ten days of the issuance of this order, specifying the claimed adverse impact. A show cause hearing will then be conducted to permit the petitioner to present their request.

This order may be amended or superseded through orders and policies adopted by the President Judge or the bench in its entirety at a future date, but shall remain in interim effect until such time as it is amended or superseded. The Court is aware that an ongoing review by the County Commissioners regarding courthouse security is underway, and the terms of this interim order may be affected by the outcome of that review, once completed. This order serves to preserve the Court's current obligations, pursuant to the Code of Judicial Conduct, until such time that longer term action, if any, is taken to restore impartial and consistent application of security procedures.

A copy of this order shall be filed as a miscellaneous docket entry with the Clerk of Court's office, and served upon the York County Sheriff's Department, The District Attorney, the Office of the Public Defender, the President Commissioner of the York County Commissioners, the President of the York County Bar Association, and the President Judge. A copy shall be posted outside this courtroom and under the glass at each counsel table so that all individuals are on notice that they are not permitted to accept partial treatment in regard to security matters for cases brought before this court.

SO ORDERED,

BY THE COURT,

A handwritten signature in black ink, consisting of a large, stylized 'C' followed by a horizontal line extending to the right. The signature is positioned above the printed name of the signatory.

CRAIG T. TREBILCOCK, J.